IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/03/2003

CORAM

THE HONOURABLE MR. JUSTICE E. PADMANABHAN

W.P. NO. 11869 OF 1997 AND W.P.NO. 18445 OF 1997
AND
W.M.P. NO. 29090 OF 1997

W.P. NO. 11869 OF 1997

B.V.V.S.S. Narayana .. Petitioner

-Vs-

1. Medapatti Venkatakrishna Reddy

2. Bharat Petroleum Corporation Ltd.
By its Senior Divisional Manager
Visakhapatnam
Andhra Pradesh.

3. Hindustan Petroleum Corporation Ltd.
By its Regional Manager
Visakapatnam
Andhra Pradesh.

4. Union of India rep. By
the Secretary, Ministry
of Petroleum and Natural Gas
New Delhi. .. Respondents

W.P. NO.18445 OF 1997

Medapatti Venkatakrishna Reddy
Chandra Agencies
Tallarevu
Neelapalli Tallarevu Mandal
East Godavari District
Andhra Pradesh. .. Petitioner

- Vs -

1. Union of India rep. By
the Secretary, Ministry
of Petroleum and Natural Gas
New Delhi.

2. Bharat Petroleum Corporation Ltd.
By its Senior Divisional Manager
Visakhapatnam
Andhra Pradesh.

3. B.V.V.S.S. Narayana .. Respondents

W.P. No.11869/97 filed under Article 226 of The Constitution of India praying this Court to issue a Writ of Mandamus as stated therein.
W.P. No.18445/97 filed under Article 226 of The Constitution of India praying this Court to issue a Writ of Certiorari as stated therein.

For Petitioners : Mr. C.S.Prakasa Rao in
WP 11869/97 & R3 in WP 18445/97
Mr. P. Subba Reddy in
WP 18445/97 & R3 in WP 11869/97

For Respondents : Mr. O.R.Santhanakrishnan
for BPCL (R2 in both WPs)
Mr.S.Swaminathanm for HPCL
(R3 in WP No.11869/97)

:ORDER

1. In W.P. No.11869 of 1997, the writ petitioner B.V.V.S.S.Narayana of Yanam, has prayed for the issue of a writ of mandamus directing the 2nd respondent, Bharat Petroleum Corporation Ltd., to resite the retail petrol outlet of M/s.Chandra Agencies (first respondent) located at Yanam to a suitable place within Andhra Pradesh and outside Yanam, part of the Union Territory of Pondicherry.
2. In W.P. No.18445 of 1997, the petitioner, Medapatti Venkatakrishna Reddy of Chandra Agencies, has prayed for the issue of a writ of certiorari to call for the records relating to the impugned order of the first respondent made in E. No.19018/39/96-MC dated 9.5.97 and quash the same.
3. According to the petitioner in W.P. No.11869/97, Hindustan Petroleum Corporation Ltd., invited applications for the location of a retail outlet in Yanam in Union Territory for sale of petroleum products. The outlet was reserved for physically disabled, retired paramilitary personnel, etc. One of the qualification being that the applicant should be a resident of Union Territory of Pondicherry for a period of not less than five years. The petitioner applied for the said dealership as a physically handicapped person. After holding a selection, the Oil Selection Board, Tamil Nadu interviewed the candidates including the petitioner and the petitioner was selected for appointment as a dealer for the retail outlet at Yanam. The letter of intent was issued on 6.5.94 with effect from 6.5.94. Yanam is a small area forming part of Union Territory of Pondicherry. but located adjacent to Andhra Pradesh. The petitioner located the retail outlet at Yanam and operating the retail outlet.

4. Medapatti Venkatakrishna Reddykrishna of Chandra Agencies was appointed as a retail petroleum dealer of Bharat Petroleum Corporation Ltd., at Tallarevu, East Godavari District (A.P.) from the category of educated unemployed, which retail outlet he was carrying on since 198 9 onwards. The said M.Venkatakrishna Reddy was selected by the Oil Selection Board after calling for application to cater the needs of Tallarevu Mandal in Godavari District covering a radius of 40 Kms. Though he was granted retail outlet to be sited at Tallarevu, the said Venkatakrishna Reddy applied to the Sub Divisional Magistrate, Yanam, for grant of a no objection certificate to locate the retail outlet at Yanam. The petitioner at that stage filed W.P. No.11135 of 1996 seeking for the issue of a writ of mandamus forbearing the Sub Divisional Magistrate from granting no objection certificate applied for by the said Venkatakrishna Reddy as it amounts to resiting outside the territory for which he was granted dealership. The said writ petition came to be dismissed as premature since such no objection certificate under the petroleum rules, if at all, could be issued only after grant of licence and such a retail outlet could be established. The petitioner was given liberty to file a fresh writ petition.

5. Based upon the no objection certificate, the said Venkatakrishna Reddy applied to the Deputy Chief Controller of Explosives for a licence. The petitioner once again filed W.P. No.12085/96 and the same came to be dismissed.

6. The petroleum company took up the matter questioning the resiting of M.Venkatakrishna Reddy's retail outlet from Tallarevu to Yanam. By communication dated 9.5.97, the Government of India, Ministry of Petroleum issued directions to the petroleum company and in particular the said Venkatakrishna Reddy to shift his outlet back to A.P. from Yanam and locate it back in Tallaruevu. Despite the said direction, the said M.Venkatakrishna Reddy continued his retail outlet at Yanam and due to the continued illegal resitement the petitioner has filed the present writ petition seeking for a mandamus directing Bharat Petroleum Corporation Ltd., to resite the retail petrol outlet of the said Venkatakrishna Reddy of Chandra Agencies to some suitable place in A.P. And outside Yanam region.

7. W.P. No.18445 of 1997 has been filed by the said Medapatti Venkatakrishna Reddy of Chandra Agencies challenging the proceedings of the Union of India directing the writ petitioner Medapatti Venkatakrishna Reddy of Chandra Agencies holding that the resitement by Venkatakrishna Reddy and Bharat Petroleum Corporation Ltd., being unauthorised and irregular, directed that the outlet be relocated at the old site or any other side in the same class or market in A.P., with the approval of other industries. Challenging the said orders of the Government of India dated 9.5.97, the said Medapatti Venkatakrishna Reddy of Chandra Agencies has filed the present writ petition.

8. According to the petitioner Venkatakrishna Reddy, he was selected and granted dealership to carry on business in petroleum products at Neelampalli, Tallarevu, East Godavari District during 1989. It is admitted that the retail outlet was located in the name of M/s.Chandra Agencies in the year 1989 at the site approved by Bharat Petroleum Corporation Ltd. Neelampalli is at a distance of 1.8 Kms., from Yanam. The 3rd respondent B.V.V.S.S.Narayana in this writ petition, who is the petitioner in W.P. No.11869 of 1997 has been granted dealership by Hindustan Petroleum Corporation Ltd., at Yanam, which is 2 Kms., away from the retail outlet at Neelampalli in A.P. There has been

certain objections and correspondence. The petitioner Venkatakrishna Reddy finding that the levy of sales tax at Neelampalli in A.P. Is 17.4 % whereas in Union Territory of Pondicherry it was only 7%, far less and, therefore, sale of MS/HSD is 27.31%, whereas in Yanam it is only 7%. Therefore, the movement of petroleum products at Yanam was higher than that at Neelampalli as the prices were higher. Therefore, he had suffered huge losses. Hence, sales came down consequent to the conferment of dealership by Hindustan Petroleum Corporation Ltd., at Yanam in favour of B.V.V.S.S.Narayana. Hence, he had applied for shifting of retail outlet from Thallaravu to Yanam, which was granted by BPC. The petitioner resited as dealer at Yanam. The 3rd respondent Narayana filed earlier writ petitions and they were all dismissed. The order of the Government of India, Ministry of Petroleum directing Venkatakrishna Reddy of Chandra Agencies, the petitioner in W.P. No.18445/97 to resite the petroleum agency within A.P. State is illegal and shifting should not have been ordered. The directions have been issued only at the instance of the sai d Narayana, the 3rd respondent. The order is illegal, violative of the policy and violative of The Constitution of India. Hence, the direction issued by the Government of India, Ministry of Petroleum dated 9.5.97 in E.No.19018/39/97-MC is illegal and liable to be quashed.

9. As the two writ petitions, one being counter to the other, to avoid confusion, it is better to refer to the parties by name. Concedingly, Narayana was selected by the Oil Selection Board for location of retail outlet at Yanam within the Union Territory of Pondicherry. Equally there is no dispute that Venkatakrishna Reddy was selected, granted and appointed retail outlet dealership by Bharat Petroleum Corporation Ltd., at Tallarevu in East Godavari District, A.P. Venkatakrishna Reddy has to locate the retail outlet within the area for which he was selected and appointed as a dealer. It is the policy that no resitement will be permitted outside the jurisdiction or area for which the dealership was granted. Despite, Narayana, who was granted a dealership at Yanam by Hindustan Petroleum Corporation Ltd., has the right to locate the retail outlet within Yanam region within the Union Territory of Pondicherry and, therefore, he was aggrieved by the unauthorised or illegal resitement of the petrol outlet by Venkatakrishna Reddy within Yanam region. Narayana moved the earlier writ petition, but on certain technical objections, those writ petitions were disposed of while giving liberty to him to move a comprehensive or appropriate writ at the appropriate stage.

10. The said Narayana took up the matter with Hindustan Petroleum Corporation Ltd., who in turn took up the matter with the oil companies serving the region and ultimately it went up to the level of Ministry of Petroleum, Government of India. After affording opportunity to Venkatakrishna Reddy and calling for reports, the Ministry of Petroleum issued directions taking into consideration of the fact that Venkatakrishna Reddy has resited outside the area and it is an unauthorised and irregular resitement, which is impermissible as per the policy. The impugned communication order of Union of India dated 9.5.97 reads thus :-

"To
The Director (Marketing)
BPCL, Mumbai.
Subject : Resitement of BPCL RO, M/s.Chandra Agencies, Tallevra East Godavari Distt. (A.P.) to Yanam in Pondicherry.
Sir,

With reference to BPCL's letter No. MKR.CLD.CON.RS. Dated March 27, 1 997 on the above noted subject, this is to state that the matter has been examined in detail in the Ministry, it is found that the resitement is unauthorised and irregular, and consequently the Government has decided to cancel the resitement of BPCL's Retail outlet, M/s. Chandra Agencies from Tallavera (A.P.) to Yanam in Pondicherry on the following grounds :

(i) The resitement of the subject RO has been done without consulting other industry members. The matter should have been put up before the state level committee through the SLC. This was not done by BPCL.

(ii) The resitement is not covered by existing guidelines which provide inter alia that resitement of a retail outlet should not be permitted for improvement or sales.

(iii) Merely drop in sales in a single year, without which for; long enough is not enough ground for resitement. There many cases of this type, which, if permitted without following any procedure, will put the total marketing plan in jeopardy and create choosing in the field.

(iv) Resitement is not in the trading area. The trading area can't go beyond the boundary of the State. Under the marketing plan, resiting is confirmed within the State. That is the category under which this RO was set up in A.P., would stand reduced, if it is resited outside the State.

(v) The resitement is unauthorised and irregular and if such resitements are allowed, market discipline will be destroyed. Further, other dealers and companies will also be motivate and encouraged to indulge in each resitement.

2) It is, therefore, requested that M/s.Chandra Agencies may be relocated at the old site or any other site in the same class of market in Andhra Pradesh with the approval of other industry members.

3) Necessary action may be taken in the matter under intimation to this Ministry.

Yours faithfully,
(O.N.Singh)
Deputy Sectetary to
Govt. Of India
T. No.3385339"

11. Heard Mr. C.S.Prakasa Rao, learned counsel appearing for the writ petitioner in W.P. No.11869 of 1997, who is also the 3rd respondent in W.P. No.18445 of 1997, Mr.P.Subba Reddy, learned counsel appearing for the petitioner in W.P. No.18445 of 1997 and who is the first respondent in W.P.No.11869 of 1997 and Mr. O.R. Santhanakrishnan, learned counsel for M/s.Bharat Petroleum Corporation Ltd., and Mr.S. Swaminathan, learned counsel for M/s.Hindustan Petroleum Corporation Ltd.

12. One other writ petition, which was pending, namely, W.P. No.12085 of 1996 came to be dismissed as having become unnecessary. In these two writ petitions, common arguments were advanced and with the consent of counsel on either side, the writ petitions are taken up for final disposal.

13. The points that arise for consideration in both the writ petitions are :-

"i) Whether the petitioner, Narayana, in W.P. No.11869/97 is entitled to the issue of writ of mandamus as prayed for ?

ii) Whether the petitioner Venkatakrishna Reddy in W.P. No.18445 of 1 997 is entitled to the relief of certiorari to call for and quash the proceedings of the first respondent Union of India in E. No.19018/3 9/96-MC dated 9.5.97 ?"

Both the points could be considered together as they are interconnected and

one is consequential to other.
14. Factually there is no controversy that Narayana has to locate his petroleum retail outlet within Yanam region in the Union Territory of Pondicherry for which dealership he was selected and appointed under the special category. Equally there is no dispute that Venkatakrishna Reddy was selected by Bharat Petroleum Corporation Ltd., to locate the retail outlet within Thallaravu Mandal in East Godavari District within the State of A.P. Venkatakrishna Reddy has no right whatsoever to locate or resite the petroleum outlet outside A.P. and particularly within Yanam region. Such a resitement is impermissible as per the policy then existing. There is no controversy with respect to the policy that existed at that time. No dealership has been granted in favour of Venkatakrishna Reddy for locating his retail outlet in Yanam region. The oil company, namely, Bharat Petroleum Corporation Ltd., has no authority or right to permit Venkatakrishna Reddy to resite his petroleum agency within Yanam region nor the authorities in Union Territory of Pondicherry are conferred with any such power to grant licence or no objection certificate. Venkatakrishna Reddy has to confine his operation within Tallarevu or in A.P., and not outside Andhra Pradesh. This is clear from the policy as well as the directions issued by the Government of India.
15. The conferment of dealership or retail outlet was subject to the condition that the same shall be located and it shall be operated within the area. The two Oil Companies, as per the policy laid down by the Government of India have agreed and also stipulated a condition that resitement will be permitted only in the same market/trading area or in the same class of market in the same district. The condition which is binding on the two oil companies and their retail dealers reads thus :-
" Generally resitement will be permitted only in the same market/ trading area or in same class of marked in same district."
Such resitement proposal will be as approved/decided by the Regional/Zonal heads of the company as the case may be.
16. Therefore, as per the policy laid down and as per the minutes of the meeting of the various oil companies operating in the region, resitement, if any, by Venkatakrishna Reddy should be within the District or area for which he was conferred with the retail outlet dealership and not outside.
17. The impugned order makes it clear that the resitement by Venkatakrishna Reddy outside A.P., and in Yanam region is not covered by existing guidelines and, therefore, he has to shift his outlet from Yanam back to Tallarevu. That apart, Venkatakrishna Reddy cannot go beyond the boundary of the State, namely, State of A.P. Therefore, it is clear that the resitement by Venkatakrishna Reddy is unauthorised, irregular and illegal. In that view, the Government of India rightly issued the impugned orders. In the light of the policy decision referred to, this Court finds that there is no illegality or impropriety or error with the order passed by the Union of India, which is the subject matter of challenge in W.P. No.18445/97 at the behest of the petitioner Venkatakrishna Reddy.
18. When once this Court comes to the conclusion that the order of Union of India directing Venkatakrishna Reddy to go back and relocate the outlet within A.P., it follows automatically that the writ petition filed by Narayana seeking for the relief of mandamus has to be issued automatically.
19. Mr.Subba Reddy, learned counsel appearing for the petitioner in W.P. No.18445/97 contended that Narayana, who is a rival in trade cannot invoke the

writ jurisdiction and a rival in trade not being an aggrieved person cannot maintain a writ petition. In this respect, the learned counsel relied upon the pronouncement in JASBHAI MOTIBHAI DESAI VS. ROSHAN KUMAR, HAJI BASHIR AHMED & OTHERS reported in AIR 1976 SC 578 = 1976 (1) SCC 671.

20. The said contention of Mr.Subba Reddy cannot be sustained at all as in the present case the various Oil Companies in India has to act as per the policy laid down by the Union of India and they have to confine themselves with respect to their sales, promotions and location of retail outlet and no deviation is permissible. When Venkatakrishna Reddy has to locate the retail outlet within the territorial limits of A.P., he has no right to relocate his retail outlet in Yanam region. Merely because there is a fall in sales or sales tax component is higher and the retail price is less at Yanam and, therefore, he has to locate the outlet at Yanam is impermissible. Having secured a retail outlet on the basis of selection to locate at Tallarevu in A.P., M.Venkatakrishna Reddy cannot resite the retail outlet outside the territory of A.P and in Yanam. The right of Venkatakrishna Reddy, if any, as granted by the oil company, is to locate his retail outlet only within the territory of A.P. and not outside A.P. The very location itself is illegal and rightly been ordered to be wound up and taken back to Tallarevu.

21. Narayana has been granted exclusive dealership to locate HSD retail outlet at Yanam. Therefore, his right is interfered as per the policy and guidelines laid down by the Government of India and Narayana is an aggrieved person. A legal right conferred on Narayana as per the policy of the Government of India and, therefore, he could very well enforce such a right by seeking the relief of mandamus. The legal duty is cast on the Union of India and other oil companies to follow the policy guidelines laid with respect to the binding sitement and resitement of HSD, MS retail outlets. The existence of legal right and legal duty are condition precedent for issue of mandamus, which is obviously present in favour of Narayana on the facts of the present case.

22. In STATE OF ORISSA & OTHERS VS. RAJASAHEB CHANDENMULL INDRAKUMAR (P) LTD. & ANOTHER reported in AIR 1972 SC 2112, the Apex Court held that unless the legal rights are established, no relief could be granted in exercise of writ jurisdiction. In this case, the legal right has been established by the petitioner, Narayana.

23. In UMAKANT SARAN VS. STATE OF BIHAR reported in AIR 1973 SC 964 = 1973 (1) SCC 485, the Apex Court held that in order to issue writ of mandamus to compel which must be established or show that the law impose a legal duty and the aggrieved party has a legal right in law. In the present case, Narayana has got a legal right and the other respondents including the Union of India has the legal duty and, therefore, he could very well maintain a writ of mandamus.

24. Even JASBHAI MOTIBHAI DESAI VS. ROSHAN KUMAR, HAJI BASHIR AHMED & OTHERS reported in AIR 1976 SC 578 = 1976 (1) SCC 671, the very decision relied upon by Mr.Subba Reddy, it has been held thus :-

"33. This Court has laid down in a number of decisions that in order to have the locus standi to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or individual right in the subject-matter of the application, though in the case of some of the writs like habeas corpus or quo warranto this rule is relaxed or modified. In other words, as a general rule, infringement of some legal right or prejudice

to some legal interest inhering in the petitioner is necessary to give him a locus standi in the matter - (See State of Orissa v. Madan Gopal, 1952 SCR 28 = (AIR 1952 SC 12); Calcutta Gas Co. V. State of West Bengal, 1962 Supp 1 SCR 1 = (AIR 1962 SC 1044); Ram Umeshwari Suthoo v. Member, Board of Revenue Orissa, (1967) 1 SCA 413; Gadda Venkateshwara Rao v. Government of Andhra Pradesh, AIR 1966 SC 828; State of Orissa v. Rajasaheb Chandanmall, AIR 1972 SC 2112; Dr.Satyanarayana Sinha v. M/s. S.Lal & Co., AIR 1973 SC 2720).

* * * *

40. Did the appellant have a legal right under the statutory provisions or under the general law which has been subjected to or threatened with injury ? The answer in the circumstances of the case must necessarily be in the negative."

25. Narayana being a person aggrieved, as he has got a genuine grievance as not only there is a violation of the policy guidelines subject to which the exclusive dealership was granted in favour of the retailers or dealers by the oil company, but also he is affected by the violation or infringement of his legal rights. Narayana has a legal right, which is recognised by law and it has been infringed. Therefore, the contention that Narayana is not a person aggrieved cannot be sustained. Hence, the contention advanced by Mr.Subba Reddy, learned counsel appearing for the petitioner in W.P. No.18445/97 cannot be sustained.

26. The no objection certificate or other permits or licence was issued by the authorities on the premise that there is a valid dealership in favour of Venkatakrishna Reddy and, therefore, the same will not confer any right on Venkatakrishna Reddy to locate or resite the retail outlet in Yanam.

27. Nextly it was contended that as of today there has been a relaxation with respect to the location of petroleum retail outlets and, therefore, neither a mandamus need be issued nor a certiorari deserves to be issued. It is true that in respect of location of petroleum retail outlets on National Highways there has been a change in policy, but that does not mean that in respect of rural areas like Yanam or Neelampalli in Tallarevu could be equated to those located on the highways.

28.The policy laid down by Union Government, which confers a right on Narayana has been infringed by the resitement without reference to the other oil company. Therefore, on the admitted facts, merely because there has been a subsequent change in the policy, the petitioner, Medapatti Venkatakrishna Reddy could locate the retail outlet at any place of his choice cannot be sustained. The very grant of privilege is to locate the retail outlet at the particular location or area and to serve the area and not to go beyond the territorial limits. Merely because there was a fall in sales or sales tax element and the price is lower in Union Territory of Pondicherry, that cannot be a ground to resite the outlet at the choice of Venkatakrishna Reddy.

29.The very condition subject to which Venkatakrishna Reddy was granted the right and the condition being that he has to locate the retail outlet within the particular area of operation, when infringed and it interferes with the legal right of Narayana, he is well founded in coming before this Court seeking the writ of mandamus.

30. The petitioner Venkatakrishna Reddy in W.P. No.18445 of 1997 has no right to locate the retail outlet in Yanam and outside the territory of A.P.

And by such a resitement of the outlet, Narayana is affected and he is well founded in his contention. The petitioner Venkatakrishna Reddy in W.P. No.18445 of 1997 has no right to resite the retail outlet within Yanam region outside the territory of A.P. Therefore, as rightly pointed out by the learned counsel for Narayana and Hindustan Petroleum Corporation Ltd., it is only Venkatakrishna Reddy, who is not the aggrieved party nor he could claim to be aggrieved by the directions issued by the Union of India directing him to go back to the original sitement or to locate within the territorial limits of A.P.

31. In any view of the matter, this Court holds that W.P. No.18445/97 deserves to be dismissed and W.P. No.11869/97 moved by B.V.V.S.S. Narayana has to be allowed and a mandamus is issued as prayed for with cost. This Court is inclined to grant cost as B.V.V.S.S.Narayana has suffered consequent to the location of the petrol bunk outside the territorial limits of A.P. and within Yanam region in Pondicherry. Venkatakrishna Reddy is directed to pay a cost of Rs.5000/= to each of the respondents in W.P. No.18445/97.

32. W.P. No.11869/97 is allowed and Rule NISI is made absolute with cost of Rs.5,000/= against the first respondent.

33. The first respondent in W.P. No.11869/97 shall forthwith close the HSD/MSD retail outlet located by him in Yanam region and he shall locate the retail outlet in Tallarevu Mandal within the territorial limits of A.P., within 15 days. If Venkatakrishna Reddy fails to resite the HSD/MSD retail outlet to Tallarevu Mandal within 15 days, Bharat Petroleum Corporation Ltd., shall stop supply HSD/MSD to Venkatakrishna Reddy after 15 days of this order and so long as the outlet is continued within Yanam region within the Union Territory of Pondicherry. The District Magistrate and Regional Officer, Yanam, are directed to revoke the licence granted in favour of Venkatakrishna Reddy forthwith on production of a copy by Narayana.

34. Consequently, connected miscellaneous petitions are closed.

Index : Yes
Internet : Yes

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To

1. The Senior Divisional Manager
Bharat Petroleum Corporation Ltd.
Visakhapatnam
Andhra Pradesh.

2. The Regional Manager
Hindustan Petroleum Corporation Ltd.
Visakapatnam
Andhra Pradesh.

3. The Secretary
Union of India
Ministry of Petroleum and Natural Gas
New Delhi.